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NO. OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

THE KIOWA TRIBE OF OKLAHOMA
a federally recognized Indian Tribe,
Petitioner,

v.

AIRCRAFT EQUIPMENT COMPANY
an Oklahoma Partnership, *et al.*,
Respondents.

On Petition for a Writ of Certiorari
to the Oklahoma Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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July, 1997

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15 pp

QUESTIONS PRESENTED

Whether seizure of a federally recognized Indian tribe's tribal tax revenue by use of state court post-judgment remedies: (a) violates the tribe's sovereign immunity, or (b) infringes upon the tribe's right to self-government and Congress' goal of tribal self-determination?

Whether a state court injunction that prohibits a federally recognized Indian tribe from enforcing its tribal tax laws on Indian Country under the tribe's jurisdiction: (a) violates the tribe's sovereign immunity, or (b) infringes upon the tribe's right to self-government and Congress' goal of tribal self-determination?

LIST OF PARTIES

The Petitioner, The Kiowa Tribe of Oklahoma, is a federally recognized Indian Tribe. Petitioner was Defendant/Appellant below.

The Respondent, Aircraft Equipment Company, is an Oklahoma partnership. It was Plaintiff/Appellee below.

The following Respondents are corporations subject to Petitioner's oil and gas severance tax. These Respondents were Defendant/Appellees below:

Associated Transport and Trading Co., a corporation
Associated Natural Gas, Inc., a corporation
Aquila Energy Corporation, a corporation
Hamon Operating Company, a corporation
Home-Stake Royalty Corporation, a corporation
Kerr-McGee Corporation, a corporation
ORYX Energy Corporation, a corporation
Plains Liquids Transport, Inc., a corporation
Senex Pipeline Company, a corporation
Sun Company, Inc., a corporation
Total Petroleum, Inc., a corporation

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OPINION BELOW

The opinion of the Oklahoma Supreme Court is reported at 68 Okla. Bar Jour. 1649 (May 10, 1997). It is styled *Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma, et al.*, No. 86,184, Supreme Court of Oklahoma. The text of the opinion is reproduced in the Appendix, p.1.

JURISDICTION

The opinion of the Oklahoma Supreme Court was entered May 6, 1997. This Court's jurisdiction to consider this petition from the final judgment or decree by the highest court of the state in which the decision could be had is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTION PROVISIONS

Article I, Section 8, Clause 3 of the United States Constitution:

> "The Congress shall have Power . . .
>
> To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

Article VI, Clause 2, of the United States Constitution:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby . . ."

STATEMENT OF THE CASE

Preliminary Statement

This case challenges state court seizure of the Kiowa Tribe of Oklahoma's ("Kiowa" or the "Tribe") tribal tax revenue. It also challenges an injunction in aid of execution which prohibits Kiowa from enforcing Kiowa law upon Kiowa Indian Country.[1] The seizure of taxes is in satisfaction of a state court damage judgment against Kiowa.

This Court has granted certiorari to review the granting of a state court judgment against Kiowa. *See Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, No. 96-1037, United States Supreme Court. The tax revenue seizure challenged in this case is being done in satisfaction of a judgment that arises from similar facts as are involved in the *Manufacturing Technologies* case. Thus, this case is related to the *Manufacturing Technologies* case because it raises issues of enforcement of a judgment which is

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[1] Indian Country is defined at 18 U.S.C. § 1151.

essentially similar to the judgment being reviewed in *Manufacturing Technologies*.

Background Facts

Kiowa is a federally recognized Indian tribe. Under federal law, Kiowa has sovereign immunity to suit unless Congress authorizes suit against it or Kiowa expressly waives its immunity. *United States v. United States Fidelity & Guaranty*, 309 U.S. 506, 60 S.Ct. 654, 84 L. Ed. 894 (1940)

In an earlier suit, the Respondent in this case, Aircraft Equipment Company, ("Aircraft Equipment"), recovered a state court damage judgment against Kiowa. Kiowa asserted that this damage judgment was void, because neither Kiowa nor Congress authorized the suit. *See Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma*, 921 P. 2d 359 (Okla. 1996) ("*Aircraft Equipment I*")[2]. The

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[2] As consideration for the purchase of a part of the shares of Clinton-Sherman Aviation, Inc., an Oklahoma business corporation, Kiowa assumed Aircraft Equipment's obligation upon an existing promissory note. Kiowa defaulted by failing to make scheduled payments. There was no waiver of sovereign immunity in the assumption agreement. Rather, Kiowa expressly reserved all of its "sovereign rights." Using a series of promissory notes as consideration, Kiowa purchased from Aircraft Equipment and other entities all shares of Clinton-Sherman Aviation, Inc. Each note specifically reserved Kiowa's sovereign rights. Defaults on these notes resulted in a series of suits against Kiowa. See *Hoover v. Kiowa Tribe of Oklahoma*, 909 P. 2d 59 (Okla. 1995) *cert. denied* ____ U.S. ____, 116 S.Ct. 1675, 134 L. Ed. 2d 799 (1996); *Aircraft Equipment I*, 921 P.2d at 363; *JBJ* (continued...)

Oklahoma Supreme Court ignored the requirement of a congressional consent to suit or a tribal waiver of immunity because it held that it has "inherent jurisdiction" over an Indian tribe that engages in commerce outside of Indian County, unless Congress ousts that jurisdiction.[3]

This particular petition for certiorari challenges Aircraft Equipment's second state court suit against Kiowa to enforce its earlier damage judgment. This second suit asked for: (1) a creditor's bill judgment to seize Kiowa's tribal tax revenues and (2) an injunction to stop Kiowa from enforcing its own tax laws on Indian Country subject to Kiowa's jurisdiction.

The targeted tax revenue is all of the oil and gas severance taxes imposed by Kiowa upon those who produce oil and gas from Kiowa Indian Country. (R.1)[4] The

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[2](...continued)
Investment v. Kiowa Tribe of Oklahoma, No. 87,032, Okla. Supreme Ct.; *Carl E. Gungoll Exploration Joint Venture v. The Kiowa Tribe of Oklahoma*, No. 87,031, Okla. Supreme Ct.; *Manufacturing Technologies, Inc. v. Kiowa Tribe of Oklahoma*, No. 86,489, Okla. Supreme Ct., cert. *granted*, No. 96-1037, U.S. Supreme Ct.

[3] *Aircraft Equipment I*, 921 P.2d at 361; *see also State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77 (Okla. 1985) ("*Seneca-Cayuga I*"); *Lewis v. Sac and Fox Tribe*, 896 P.2d 503 (Okla. 1994) *cert. denied* ____ U.S. ____, 116 S.Ct. 476, 133 L. Ed. 2d 405 (1995); *Hoover*, 909 P.2d at 61; *First Nat'l. Bank in Altus v. Kiowa, Comanche and Apache Intertribal Land Use Committee*, 913 P.2d 299 (Okla. 1996).

[4] References to ("R. ____") are to the record on appeal in this case, *Aircraft Equipment Company v. Kiowa Tribe of Oklahoma, No. 86,184*, Oklahoma Supreme Court. Because there was a prior (continued...)

severance tax makes up about one-third of Kiowa's total tax revenue. (R. 253) Kiowa uses these tax funds to operate its government: pay employee salaries, maintain real and personal property, fund education and job training programs and supplement federal-tribal programs. (R. 253)

Kiowa defended against this action to enforce the damage award and claimed that sovereign immunity barred such a suit and that seizure of its tax revenues infringed upon its tribal sovereignty and right to self government.[5] (R. 240-280)

The oil and gas production companies who owed the taxes to Kiowa interplead these monies with the trial court. (R. 158, 212, 236, 310, 313-14, 343 409-21) Kiowa asserted that if the companies paid the tax to the court or to Aircraft Equipment, then they failed to pay the tax. If the tax was not paid, then the companies' property was subject to a tax lien created by Kiowa law. (R.188) The companies asked the court to enjoin Kiowa from foreclosing its tax lien. Kiowa opposed the injunction request, claimed its sovereign immunity and contended that the state court had no power to

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[4](...continued)
interlocutory appeal, that record also includes the record in *Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma*, No. 85,975, Oklahoma Supreme Court.

[5] At the trial level, Kiowa asserted its defenses by Answer, by Motion to Dismiss and Objection to Motion for Summary Judgment and at trial. (R. 125) Relevant portions of the Motion to Dismiss and Objection to Motion for Summary Judgment and trial transcripts are in the Appendix, p. 22-35.

stop Kiowa from enforcing Kiowa law upon Kiowa Indian Country. (R. 240-280)

The trial court gave Aircraft Equipment judgment against Kiowa for a creditor's bill.[6] (R. 129-148) It ordered the oil and gas production companies to pay Kiowa's taxes to the Oklahoma County Court Clerk, pending resolution of two other appeals which challenged both the underlying judgment and Oklahoma's authority to seize tribal funds by garnishment.[7] The trial court also enjoined Kiowa from enforcing its tribal law tax lien against the companies for non-payment of the tax.

Kiowa appealed to the Oklahoma Supreme Court. It asserted its tribal sovereign immunity and that the Oklahoma courts had no jurisdiction over it, no authority to seize its assets and no authority to enjoin it from enforcing its laws.[8]

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[6] A copy of the judgment is reproduced in the Appendix, p. 36.

[7] *Aircraft Equipment Company v. The Kiowa Tribe et al.*, No. 82,505, Supreme Court of Oklahoma and *Aircraft Equipment Company v. The Kiowa Tribe*, No. 85,272, Supreme Court of Oklahoma. The appeal, of the underlying judgment, was resolved in *Aircraft Equipment I*. The garnishment appeal remains undecided.

[8] See Petition in Error, Case No. 86, 184, Oklahoma Supreme Court:

> "1. Whether a state district court can enjoin a federally recognized sovereign Indian tribe from enforcing its laws and prohibit a tribe from asserting its statutory lien rights for nonpayment of taxes.

(continued...)

The Oklahoma Supreme Court upheld the trial court. It relied upon three of its prior decisions for the idea that, when a tribe engages in commerce off of Indian Country, Oklahoma courts have "inherent jurisdiction" over that Indian tribe, unless that jurisdiction has been "ousted" by affirmative Congressional action. *See State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77, 88 (Okla. 1985) (*Seneca-Cayuga I*);[9] *Lewis v. Sac and Fox Tribe*, 896 P.2d 503, 511 (Okla. 1994) *cert. denied* ____ U.S. ____, 116 S.Ct. 476, 133 L.Ed.2d 405 (1995) and *Hoover v. Kiowa Tribe of Oklahoma*, 909 P.2d 59, 62 (Okla. 1995) *cert. denied* ____ U.S. ____, 116 S.Ct. 1675, 134 L.Ed.2d 799 (Okla. 1996). After having used its own prior case law to establish its judicial authority over a federally recognized Indian tribe, the Oklahoma Supreme Court next concluded that if it had the power in *Aircraft Equipment I* to grant a judgment against Kiowa, then it also must have the power to

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[8](...continued)

2. Whether a state district court has the power to direct that the tax revenues of a federally recognized sovereign Indian tribe be paid to the district court clerk rather than to the tribe which assessed the tax."

[9] As a result of the Oklahoma Supreme Court's decision in *Seneca-Cayuga I*, the Seneca-Cayuga Tribe filed its own suit in federal court to stop the prosecution of the remanded case in Oklahoma courts. The tribe's federal suit resulted in *Seneca-Cayuga Tribe v. State ex rel. Thompson*, 874 F.2d 709 (10th Cir. 1989) ("*Seneca-Cayuga II*"), in which the Tenth Circuit Court of Appeals enjoined the prosecution of the remanded case in *Seneca-Cayuga I*. After *Seneca-Cayuga II*, the Oklahoma Supreme Court did not rely on *Seneca-Cayuga I* until this case.

enforce that judgment. Hence, it concluded that it could lawfully seize Kiowa tax revenues.

The Oklahoma Supreme Court rejected the Tribe's argument that it was immune to suit and that the seizure of its tax revenues infringed upon the its sovereign right to tax. The court also rejected Kiowa's argument that the seizure of tribal taxes infringed upon Kiowa's right to self-government. The court concluded that if seizure of tax revenues did infringe upon trial self-government, then that infringement was legally permissible because the tribe had "ventured outside" of its own Indian Country.

REASONS FOR GRANTING THE WRIT

I. The Oklahoma Supreme Court Decided An Issue Of Indian Tribal Sovereignty In A Way That Conflicts With Applicable Decisions Of This Court And Conflicts With 'Overriding' Congressional Goals Of Fostering Tribal Development.

Commerce and relations with Indian tribes are the province of federal law. United States Constitution, Article I, sec. 8, cl. 3, Art. 2, sec. 2.; *Oneida County N.Y.* v. *Oneida Indian Nation of New York State*, 470 U.S. 226, 105 S.Ct. 1245, 1251, 84 L. Ed. 2d 169 (1985). States have been divested of virtually all authority over Indian commerce and Indian tribes. *Seminole Tribe of Fla.* v. *Fla.*, 517 U.S. ___, 116 S. Ct. 1114, 1126, 134 L. Ed. 2d 252 (1996)

This grant of authority to the federal government is a feature of the United States Constitution. The earlier effort in the Articles of Confederation to give the states some authority over Indian affairs was unworkable. The Articles of Confederation provided:

> The united states in Congress assembled shall also have the sole and exclusive right and power of ... regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits shall not be infringed or violated.

James Madison observed that the attempt to give some authority to the states did not work:

> The regulation of commerce with the Indian tribes is very properly unfettered from two limitations in the Articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of the States, and is not to violate or infringe upon the legislative right of any state within its own limits. What description of Indians are to be deemed members of a state is not yet settled, and has been a question of frequent perplexity and contention in federal councils. And how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external

> authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the Articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom by taking away a part and letting the whole remain.

Federalist No. 42 (C. Rossiter, ed., 1961).

Federal regulation of Indian Commerce and Indian affairs has taken various turns over time. But the consistent foundation has been to recognize Indian tribes as "distinct, independent political communities, retaining their original natural rights in matters of local self government." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978) *citing Worcester v. Georgia*, 6 Pet. 515, 8 L. Ed. 483 (1832). This foundation recognizes that tribes have the "power to make their own substantive laws in internal matters," *Santa Clara*, 98 S. Ct. at 1675 *citing Roff v. Burney*, 168 U.S. 218, 18 S. Ct. 60, 42 L. Ed. 442 (1897) and to enforce that law in their own forum. *Santa Clara*, 98 S.Ct. at 1675, *citing Williams v. Lee*, 358 U.S. 217, 79 S.Ct. 269, 3 L. Ed. 2d 251 (1959).

A key concept that secures this tribal power is a tribe's immunity to suit. The immunity aspect of tribal sovereignty, like all other aspects, is subject to the superior

and plenary authority of Congress. *Santa Clara,* 98 S.Ct. at 1677. Thus, only a tribe or Congress may create court jurisdiction over a tribe. This jurisdiction is created solely by waiver of a tribe's immunity. *USF&G.*, 60 S.Ct. at 656. Without either tribal or Congressional consent, an attempt to exercise judicial power over an Indian tribe is void. *U.S.F.&G.*, 60 S.Ct. at 657.

While tribal immunity has been criticized,[10] this Court has recognized both the existence and the importance of tribal immunity in Congress's role of regulating Indian affairs.[11] It refused a recent invitation to modify the immunity doctrine. In *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 111 S.Ct. 905, 910, 112 L. Ed. 2d 1112 (1991), this Court found that Congress, in the exercise of its authority over tribes, has not dispensed with tribal immunity, but, instead, has repeatedly approved this immunity doctrine.[12] Under those circumstances this Court held that it would not modify the long-established principle of tribal sovereign immunity.

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[10] In his concurring opinion, Justice Stevens stated that "The doctrine of sovereign immunity is founded upon an anachronistic fiction." *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 111 S.Ct. 905, 112 L. Ed. 2d 1112 (1991).

[11] "The rule that an Indian tribe is immune from an action for damages ... is, however, an established part of our law." Justice Stevens, concurring, in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 US, 505, 111 S.Ct. 905, 112 L. Ed. 2d 1112 (1991).

[12] See 25 U.S.C. § 450n(1) which specifically preserves tribal immunity to suit.

Citizen Band, 111 S.Ct. at 910. Indeed, this Court has said it will "tread lightly" in an area concerning "tribal sovereignty" and the "plenary authority of Congress." *Santa Clara*, 98 S.Ct. at 1678.

Oklahoma's unique position on tribal immunity is completely at odds with federal law. Federal law provides there is no court jurisdiction over an Indian tribe unless that jurisdiction is *created* by the affirmative act of either Congress or the tribe. *U.S.F&G*, 60 S.Ct. at 656. Oklahoma stands this federal law principle on its head and holds that it has "inherent" court jurisdiction over a tribe, unless that jurisdiction is *destroyed* by an affirmative act of Congress. *Lewis*, 896 P.2d at 511.

When the Oklahoma Supreme Court authorizes seizure of tribal tax money, it unavoidably takes from the federal government a part of the federal power to regulate Indian commerce and Indian affairs. Any government, including tribal governments, must have both money and laws to function. When Oklahoma courts seize tribal taxes and enjoin enforcement of tribal law, Oklahoma courts necessarily assume the power to dictate what the tribal government is able to do. The particular taxes seized in this case were used to pay tribal employees, maintain tribal real and personal property, support tribal educational and job training programs and supplement funding for various federal-tribal programs. (R. 253) When the taxes were seized, those governmental functions were necessarily reduced or eliminated, solely upon the word of Oklahoma courts. This plainly violates the principle that tribal sovereignty is subordinate only to the federal government.

Santa Clara, 98 S. Ct. at 1677; *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L. Ed. 2d 10 (1980).

This Court previously pointed out that the power to tax is an essential attribute of tribal sovereignty because it is a necessary instrument of self-government and territorial management. *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 102 S.Ct. 894, 901, 81 L. Ed. 2d 21 (1982). If taxes are necessary for self-government, then diverting taxes to pay a state court judgment must, necessarily, deprive the tribal sovereign of the ability to govern itself.[13] Can there be a more obvious infringement on a tribe's right to self-government than the seizure of its taxes?

Oklahoma's course also collides with Congress because the latter is actively pursuing a policy of fostering tribal development. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 107 S.Ct. 1083, 1092, 94 L. Ed. 2d 244 (1987) (Congress's "overriding goal" is to encourage

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[13] The United States' Brief *amicus curiae* in the petition for certiorari *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, No. 96-1037, United States Supreme Court, references the Oklahoma Supreme Court's decision in this case. In making a request to grant certiorari in the *Manufacturing Technologies* case, the United States brief says, at page 18:

> "Finally, as the state supreme court's most recent *Aircraft Equipment* decision underscores, the state courts' holdings leave petitioner subject to attachment or garnishment of tribal tax revenues or other tribal funds. Such attachment represents a significant interference with the Tribe's essential governmental functions."

tribal self-sufficiency and economic development).[14] Congress pursues this goal through many statutory and regulatory devices that make tribal and federal interests parallel. *Id.* at 1093. These devices include the Indian Tribal Judgment Funds Use or Distribution Act[15] (25 U.S.C. § 1401 et seq.) the Indian Self Determination and Education Assistance Act[16] (25 U.S.C. § 450(a) et seq.) and the Indian Financing Act (25 U.S.C. § 1451 et seq.)

Oklahoma's new exercise of jurisdiction over Indian affairs disrupted Kiowa's programs under two of these Acts. In separate, but closely related suits, Oklahoma state courts garnished Kiowa's bank accounts that held tribal tax revenues and monies paid to Kiowa by the United States under both the Indian Tribal Judgment Funds Use or Distribution Act and the Indian Self Determination And

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[14] The Indian Self Determination and Education Assistance Act states: "...In accordance with this policy the United States is committed to supporting and assisting Indian tribes in development of strong and stable tribal governments, capable of administrating quality programs and developing the economies of their respective communities." 25 U.S.C. § 450(a)(b).

[15] 25 U.S.C. § 1401 regulates the use and distribution of funds appropriated in satisfaction of judgments of the Indian Claims Commission or the United States Court of Federal Claims in favor of Indian tribes. Pursuant to § 1403(b)(5), a "significant portion" of the funds are reserved for "common tribal needs, education requirements and such other purposes as the circumstances of the affected Indian tribe may justify."

[16] 25 U.S.C. § 450 *et seq.* The federal government to contract with tribes to administer various social programs. Federal funds are provided for tribal administration of these programs.

Education Assistance Act.[17] *See Hoover v. Kiowa Tribe of Oklahoma. v. First Nat'l Bank of Mountainview, Okla.*, Garnishee, No. CIV-96-1624-L, W.D. Okla., (prior to removal, CJ-91-667 Dist. Ct., Okla. County, Okla.) and *Carl E. Gungoll Exploration Joint Venture v. Kiowa Tribe of Okla. v. Anadarko Bank & Trust Co.*, Garnishee, No. CIV-96-2059-T, W.D. Okla., (prior to removal, CJ-90-10166, Dist. Ct., Okla. County, Okla.)

To this point, a significant amount of Kiowa's funds have been seized by state court process. The seized funds include federal monies allocated for a housing improvement program, food distribution and higher education. Admittedly, these cases are not the subject of this certiorari petition. But they do show the extent of Oklahoma's interference with federal Indian policy.

It is important to recognize that this case is not an aberration in Oklahoma law. It is one step in the pursuit of a major policy change[18] by the Oklahoma Supreme Court.

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[17] These suits are among those that arose from Kiowa's defaults upon other notes used to purchase shares of Clinton-Sherman Aviation, Inc. Again, in these suits, Kiowa did not waive its immunity, but expressly reserved its sovereign rights.

[18] The dissent in the 1994 *Lewis* decision recognized that the Oklahoma Supreme Court had to "effectively overrule" its 1990 decision in *Housing Authority of Seminole Nation v. Harjo*, 790 P.2d 1098 (Okla. 1990). *Lewis*, 896 P.2d at 516. The dissent also recognized that cases not expressly overruled in *Lewis* were *Ahboah v. Housing Authority of Kiowa Tribe*, 660 P.2d 625 (Okla. 1983); *Barnett v. Newcomer*, 307 P.2d 148 (Okla. 1957) and *Swain v. Hildebrand*, 36 P.2d 924 (Okla. 1934); *Lewis*, 896 P.2d at 516, note 1.

A minority of the Oklahoma Supreme Court admits that its position conflicts with the main line federal law on Indian sovereignty. In *Aircraft Equipment I*, Justice Summers said "[t]he majority opinion contravenes the mainstream of contemporary sovereign immunity jurisprudence. It is certainly contrary to *Sac & Fox Nation v. Hanson*, 47 F.3d 1065 (10th Cir. 1995)."[20] *Aircraft Equipment Company I*, 921 P. 2d at 362. The majority, however, persists and finds that its "inherent jurisdiction" position was vindicated when certiorari was denied by this Court in *Lewis* and *Hoover*:

> We follow the jurisprudence of *Hoover* and *Lewis* because in both cases certiorari was denied by the Supreme Court of the United States.

Aircraft Equipment I, 921 P. 2d at 361.

From this statement, it is obvious that review by this Court is necessary. In light of the Oklahoma Supreme Court's reliance upon *Seneca-Cayuga I*, even after the Tenth Circuit stopped state court prosecution in *Seneca-Cayuga II*,[21] it is clear that the Oklahoma Supreme Court will continue to subject tribes to its "inherent jurisdiction" until this Court or Congress says it cannot.

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[20] *Sac & Fox Nation v. Hanson*, 47 F.3d 1065 (10th Cir. 1995) plainly recognized tribal immunity to a suit arising from a tribe's commerce outside Indian Country.

[21] See footnote 9.

Aircraft Equipment I, 921 P. 2d at 361.

From this statement, it is obvious that review by this Court is necessary. In light of the Oklahoma Supreme Court's reliance upon *Seneca-Cayuga I*, even after the Tenth Circuit stopped state court prosecution in *Seneca-Cayuga II*,[21] it is clear that the Oklahoma Supreme Court will continue to subject tribes to its "inherent jurisdiction" until this Court or Congress says it cannot.

II. There Is A Conflict Between Decisions Of The Oklahoma Supreme Court And Decisions Of The Tenth Circuit Court Of Appeals On The Issue Of Tribal Sovereign Immunity.

The Tenth Circuit recognizes that, as a matter of federal law, an Indian tribe is immune to suit, absent a clear waiver by the tribe or Congressional abrogation. *Bank of Okla. v. Muscogee (Creek) Nation*, 972 F.2d 1166 (10th Cir. 1992). This holding is consistent with a long line of decisions by this Court. *Santa Clara Pueblo*, 98 S.Ct. at 1677; *U.S.F.&G.*, 60 S.Ct. at 656.

The Tenth Circuit has also held that, in the absence of tribal or Congressional waiver, tribal immunity to damage suits applied to a tribe's conduct of commerce outside tribal territory. *Hanson*, 47 F.3d at 1035.

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[21] See footnote 9.

In this case, the Oklahoma Supreme Court concluded that when Kiowa "ventured outside its Indian Country" it subjected itself to Oklahoma's jurisdiction and its tribal taxes could be seized by state court process.

The Oklahoma Supreme Court's decision directly conflicts with the Tenth Circuit's *Hanson* decision. Either court would have decided the other court's case in an exactly opposite way.

The direct conflict is particularly acute because it raises the question of whether state judicial power over Indian tribes is limited by federal law.[22] *Hanson*, in which a federal court enjoined a state court from exercising jurisdiction over a tribe, makes plain the extent of the problem of this conflict. Unless there is resolution of these conflicting decisions, tribes that wish to protect their federally recognized rights will be forced to seek federal court relief. With thirty-six federally recognized Indian tribes in Oklahoma, more cases are bound to follow.

It is not desirable to allow this conflict to continue unresolved and generate a series of federal suits and petitions for certiorari. This Court should grant certiorari to provide a resolution of this conflict for both the Oklahoma Supreme Court and the Court of Appeals for the Tenth Circuit.

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[22] In *Aircraft Equipment I*, the Oklahoma Supreme Court refused to follow Tenth Circuit authority and held that it is not bound by a federal court's pronouncement "on a state law question". *Aircraft Equipment*, 921 P. 2d at 361. Presumably this "state law question" is the Oklahoma Supreme Court's position that it has "inherent jurisdiction" over Indian tribes.

III. The Oklahoma Supreme Court Decided A Question Of Tribal Sovereign Immunity Which Has Not, But Should Be, Decided By The Supreme Court.

If there is to be an expansion of state authority over Indian tribes, then that change should come from this Court or from Congress, not from a state court declaring its own powers. Such a change should come from the federal government because commerce with Indian tribes and definition of the nature of tribal sovereignty are matters of federal law. United States Constitution Art. 1, sec. 8, cl. 3; *Santa Clara,* 98 S.Ct. at 1675, 1677.

Review of this case presents the opportunity to set a clear uniform precedent and allow tribes, persons engaging in commerce with tribes, and states to understand the nature and extent of their rights and powers.

CONCLUSION

A writ of certiorari should be granted, the judgment for Respondents reversed, and the case should be remanded with instructions to dismiss for lack of jurisdiction.

Respectfully submitted,

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Appendix

Appendix 1

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY,	)	
	)	
Appellee/Cross Appellant,	)	
	)	
v.	)	
	)	No. 86,184
THE KIOWA TRIBE OF OKLAHOMA,	)	
	)	
Appellant/Cross Appellee,	)	
	)	
WATSON MANAGEMENT GROUP, INC.; KOCH OIL COMPANY, a division of KOCH INDUSTRIES, INC.; AQUILA ENERGY CORPORATION, KERR MCGEE REFINING CORPORATION, ORYX ENERGY CORPORATION, PLAINS LIQUIDS TRANSPORT, INC., SUN COMPANY, INC. (R&M), ASSOCIATED NATURAL GAS, INC., ASSOCIATED TRANSPORT AND TRADING COMPANY, SENEX PIPE LINE COMPANY, and HAMON OPERATING COMPANY,	)	
	)	
Appellees.	)	

Appeal From The District Court Oklahoma County,
The Honorable John M. Amick, District Judge

¶ 0 The District Court in Oklahoma County entered a money judgment in favor of Aircraft Equipment Company, the appellee, and against The Kiowa Tribe of Oklahoma, appellant. The Tribe appealed. The money judgment was affirmed. During the course of the appeal, Aircraft proceeded to enforce its money judgment out of tax funds in the possession of oil and gas operators and purchasers. The District court in Oklahoma County entered judgment on Aircraft's petition for a creditor's bill, directed the funds be paid into the court, allowed costs and attorney fees out of the funds, and restrained the Tribe from enforcing tax liens against the oil and gas operators and purchasers.

JUDGMENT OF THE DISTRICT COURT AFFIRMED.

William J. Robinson Oklahoma City, OK	For Appellee and Cross Cross-Appellant, Aircraft Equipment Company
Shelia D. Tims R. Brown Wallace Oklahoma City, OK	For Appellant, The Kiowa Tribe of Oklahoma
Janis Preslar Oklahoma City, OK	For Appellees, Aquila Energy Corporation, The HomeStake Royalty Corp., Sun Co., Inc. (R&M) and Associated Natural Gas, Inc., Associated Transport & Trading Co.
Jonathan E. Miller Oklahoma City, OK	For Appellee, Oryx Energy Corp.

Myron K. Cunningham Oklahoma City, OK	For Appellee, Kerr-McGee Corp.
Dwight W. Birdwell Ronald J. Pool Oklahoma City, OK	For Appellee, Plains Liquids Transport, Inc.

ALMA WILSON, Justice:

¶ 1 This appeal arises out of a post-judgment proceeding in the District Court of Oklahoma County, Oklahoma, initiated by Aircraft Equipment Company, appellee (Aircraft), to satisfy a money judgment entered by the Oklahoma County District Count against The Kiowa Tribe of Oklahoma, appellant (Tribe). The dispositive questions is whether the state district court may enforce its money judgment against the Tribe. Pursuant to the universal rule that the power to render a judgment includes the power to enforce the judgment, we answer in the affirmative.

¶ 2 The underlying money judgment in favor of Aircraft and against the Tribe was entered in a contract action and affirmed in *Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma*, 921 P.2d 359 (Okla. 1996) (*Aircraft 1*). Aircraft initiated a separate post-judgment proceeding seeking equitable relief in the nature of a creditor's bill during the pendency of the appeal in *Aircraft 1*.[1] Aircraft contends that equitable relief will avoid the cost

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[1]The judgment in *Aircraft 1* is in the amount of $180,000.00 plus interest at the rate of ten percent per annum from April 3, 1990. Prior to seeking equitable relief, Aircraft sought to satisfy its judgment through

(continued...)

and time burdens of multiple garnishments. The Tribe does not challenge the propriety of the equitable remedy, rather it contends that enforcement of the money judgment is contrary to federal law.

¶ 3 Through the creditor's bill, Aircraft sought to satisfy its judgment from funds in the possession of the Tribe's contracted tax collector, Watson Management Group, Inc., and the taxpayers, appellee oil and gas entities.[2] In response, the defending oil and gas entities made requests to interplead the funds into the district court, for attorney fees and costs of the interpleader, and to restrain the Tribe from enforcing its tax liens against them. By its Journal Entry of Judgment filed October 13, 1995, the district court granted Aircraft's request to satisfy its money judgment out of the tax due from the oil and gas entities; directed that the funds be paid into the court; allowed costs and attorney fees as

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[1](...continued)
garnishments. Whether the money judgment against the Tribe may be enforced through garnishment proceedings is pending before this Court in *Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma, et al.*, No. 85,272.

[2]Pursuant to the General Revenue and Taxation Ordinance, adopted by Resolution No. 86-66 of the Kiowa Business Committee of the Tribe, August 11, 1986, an occupation tax is imposed upon working interest owners of mineral rights underlying land owned by the Tribe or its members. The tax is calculated on the gross value of production less the royalty proceeds due the lessors. The tax is reported and paid on a monthly basis. Watson Management Group, Inc., collects the tax for the Tribe from the first purchaser or operator, retaining fifty percent of the collections for its services. The failure to pay the tax, under the General Revenue and Taxation Ordinance, creates a lien on all oil and gas proceeds attributable to the working interest owners (R., vol. I, pp. 257-280)

deductions from the funds in amounts to be determined at a later hearing; and restrained the Tribe from enforcing its tax liens against the appellee oil and gas entities.

¶ 4 The Tribe asks this Court to reverse and vacate the money judgment in *Aircraft 1* and to direct district court dismissal of the petition for a creditor's bill. The Tribe contends that in the absence of its consent to suit or its waiver of sovereign immunity, Oklahoma lacks judicial power to enter or enforce a money judgment against the Tribe. The Tribe argues that *Aircraft 1* is based upon two Oklahoma cases that are inconsistent with federal law, *Lewis v. The Sac and Fox Tribe of Oklahoma Housing Authority*, 896 P.2d 503 (Okla. 1994), *cert. denied* 116 S.Ct. 476 (1995), and *Hoover v. Kiowa Tribe of Oklahoma*, 909 P.2d 59 (Okla. 1995), *cert. denied* 116 S.Ct. 1675 (1996). The Tribe asserts that *Lewis* and *Hoover* failed to recognize that tribal sovereignty is presumed intact, *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987), and that absolute immunity to damage suits is a significant aspect of tribal sovereignty, *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 111 S.Ct. 905, 112 L.Ed.2d 1112 (1991).

¶ 5 In *Iowa Mutual Insurance Company v. LaPlante*, *supra*, an insurer sought declaratory judgement that its liability contract, insuring an on-reservation commercial enterprise, did not impose a duty to defend in the tribal court against a claim to recover for personal injury occurring on the reservation. The *LaPlante* Court concluded that the tribal court should determine its jurisdiction and any tribal court remedy should be exhausted, as a matter of

comity rather than jurisdiction, before the federal district court considers the declaratory judgment claim. *LaPlante* does not stand for the proposition that a presumption of sovereignty bars the exercise of state judicial power over a controversy arising out of an Indian tribe's commercial activity outside of Indian county as presented in *Aircraft 1*.

¶ 6 In *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe, supra*, the state assessed the Potawatomi Tribe for taxes which the Tribe had failed to pay on cigarettes sold to tribal members and non-members at the Tribe's convenience store on Indian country land. The Court concluded that the doctrine of tribal sovereign immunity protects the Potawatomi Tribe from suit by the state to collect its assessment for delinquent taxes. Following *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 100 S.Ct. 2069, 65 L.Ed.2d 10 (1980) and *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463, 96 S.Ct. 1634, 48 L.Ed.2d 96 (1976), the Court recognized that the state's taxing power may reach inside of Indian country and that the immunity doctrine does not shield an Indian tribe from all state-law obligations to assist in the collection of state taxes. Concluding that the immunity doctrine prevented the state from collecting its delinquent taxes directly from the tribe, the *Citizens Band Potawatomi* opinion observes that the doctrine does not prevent collection of taxes from individual tribal agents and officers, nor individual Indians dealing with non-Indians within Indian country, or non-Indians dealing

with Tribe outside Indian country.[3] In his concurring opinion in the *Citizen Band Potawatomi* case, Justice Stevens viewed the foundation of the doctrine of tribal sovereign immunity as an anachronistic fiction. Recognizing that an Indian tribe is immune from an action for damages absent its consent and citing *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 60 S.Ct. 653, 84 L.Ed. 894 (1940), Justice Stevens expressed doubt that the immunity extends to cases arising from a tribe's conduct of commercial activity outside

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[3]The dissent reads the *Citizens Band Potawatomi* opinion as recognizing that Oklahoma has a right to secure a judgment against the Tribe for the delinquent tax due on the Tribe's sales of cigarettes to non-tribal members, without a judicial remedy to enforce the judgment. That was not the case. The *Citizen Band Potawatomi* Court determined that the state had a right to impose tax burdens on non-Indians within Indian country, but it had no judicial remedy for the collection of delinquent taxes directly from the Tribe even though the taxes should have been collected from the non-Indian consumers when purchasing cigarettes at the Tribe's convenience store located on Indian country. The *Citizen Band Potawatomi* Court concluded that the doctrine of tribal sovereign immunity prevented the Oklahoma Tax Commission from collecting delinquent sales tax through the "most efficient remedy" -- collection from the single retailer (the Tribe) rather than from the countless consumer/purchasers. The *Citizens Band Potawatomi* discussion of "remedies" concerns the statutory tax collection method of assessing a retailer for delinquent taxes that the retailer failed to collect from the consumer/taxpayers; it does not relate to remedies available to a judgment creditor as herein involved. Nothing in the *Citizens Band Potawatomi* opinion intimates that the "State of Oklahoma, as a judgment creditor, does not have [a judicial remedy] against the Indian tribe," as suggested by the dissent.

its own territory.[4] Neither the opinion, nor the concurring opinion, in the *Citizen Band Potawatomi* case teaches that a federally recognized Indian tribe is absolutely immune from suit for money judgment as we allowed and affirmed in *Aircraft 1*. We expressly reject the Tribe's argument that the doctrine of tribal immunity has a greater reach than that of the state or federal governments.[5]

¶ 7 The dissent would declare, as urged by the Tribe, that Oklahoma's judicial power can only be extended over her Indian tribes upon express tribal or congressional consent. In *State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77, 85 (1985), we rejected the concept that Oklahoma's judicial authority does not reach Indian tribes within the state's borders, unless Congress or the Tribe has expressly provided otherwise. Our *Seneca-Cayuga* holding was grounded in the

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[4]In *United States v. United States Fidelity & Guaranty Co.*, *supra.*, the U.S. Supreme Court determined that 34 Stat. 137, 144, authorized suit against the United States, on behalf of the dependent Choctaw and Chickasaw tribes, only in the federal court in Indian Territory and therefore, refused to enforce a Missouri money judgment against the Tribes. The congressional enactment published at 34 Stat. 137, approved April 26, 1906, provided, *inter alia*, for the dissolution of the Five Civilized Tribes in Indian Territory and fixed the rolls of citizens of each of the Five Civilized Tribes.

[5]The Tribe asserts that the doctrine of tribal sovereignty is an absolute immunity protecting it from suit arising out of its torts or contracts arising outside Indian country. The dissent would extend tribal immunity as an absolute bar to suit or other legal process initiated by a judgment creditor to satisfy a valid judgment against a tribe. Both the Tribe and the dissent press for greater immunity from suit than is enjoyed by either the state or federal government.

early congressional enactments surrounding statehood.[6]

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[6]*State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d at 86-87. The State of Oklahoma has a unique history in regard to relations with Indian tribes within her boundaries. R. Strickland, *Felix S. Cohen's Handbook of Federal Indian Law*, (1982 Ed.), p. This history reveals that the State of Oklahoma, from the time of statehood, has been vested with judicial jurisdiction over all her citizens. The Organic Act of May 2, 1890, 26 Stat. 81, fixed the boundaries of Oklahoma Territory and Indian Territory and established territorial governments therefor. In the 1890's lands of most of the tribes in Oklahoma Territory were allotted. *Id.*, at 774. In 1893, the Dawes Commission was established to facilitate the allotment of the lands of the Five Civilized Tribes in Indian Territory. *Id.* The Curtis Act of June 28, 1898, 30 Stat. 495, intended to expedite the allotment process, abolished the tribal governments in Indian Territory, including the tribal courts. The Five Civilized Tribes attempted to have Indian Territory admitted as the state of Sequoyah. In the face of congressional opposition to the proposed state of Sequoyah, the Five Civilized Tribes supported the admission of Oklahoma Territory and Indian Territory as a single state of the United Stats. Casey, O., *And Justice for All*, (1989). The Enabling Act of June 16, 1906, 34 Stat. 267, permitted the two territories to seek statehood for the State of Oklahoma. Section 2 of the Enabling Act expressly provided that U.S. citizens and members of Indian tribes or nations may vote and participate in the formation of the constitutional state government for the State of Oklahoma. The Organic Act at § 43 and the Enabling Act at § 2 contemplate that Indians residing in Indian Territory and Oklahoma Territory would be assimilated as citizens of the United States and the State of Oklahoma. Section 12 of the Organic Act extended the jurisdiction of the district courts in Oklahoma Territory to all controversies involving members or citizens of an Indian tribe or nation except controversies arising between Indians of the same tribe while sustaining their tribal relations, and § 30 extended the jurisdiction of the courts in Indian Territory to all civil and criminal cases except cases arising in the territory in which members of an Indian nation were the only parties. And, §§ 19 and 20 of the Enabling Act declared that the courts of original jurisdiction for the State of Oklahoma would be the successor to all courts of original jurisdiction in Indian Territory and Oklahoma Territory. In *Oklahoma Tax Commission v. United States*, 319 U.S. 598, 63 S.Ct. 1284, 87 L.Ed. 1612 (1943), the United States Supreme Court observed that the Oklahoma Indians are actually citizens of the State with little to distinguish them from all other citizens except for their limited property restrictions and tax exemptions and that they retain remnants of tribal sovereignty with no effective tribal autonomy.

Similar to the *Citizen Band Potawatomi* case, the *Seneca-Cayuga* case recognized that a state generally has authority over non-Indians within Indian country and Indians and their activities outside of Indian country. As to the activities of the tribe and its members within Indian country, our *Seneca-Cayuga* opinion concluded that, through the years, the doctrine of tribal sovereign immunity has been displaced by the principles of federal preemption and infringement on tribal self-government. Following the *Seneca-Cayuga* reasoning, *Lewis v. The Sac and Fox Tribe of Oklahoma Housing Authority*, *supra*, held that Oklahoma courts have constitutionally-invested cognizance, concurrent with federal courts, to entertain any federal-law claim not explicitly withdrawn from their authority by some congressional enactment, so long as state judicature does not infringe upon tribal self-government. *Lewis* involved a contractual dispute between an Indian home buyer and an Indian housing authority arising out of the housing authority's promise to convey its interests in real property. And applying *Lewis*, *Hoover v. Kiowa Tribe of Oklahoma*, *supra*, held that a contract between an Indian tribe and non-Indian executed outside of Indian country is enforceable in state court. *Hoover* involved a contractual dispute between the Kiowa Tribe and a private individual arising out of the Tribe's promise to pay for 5,000 shares of common stock in the Clinton-Sherman Aviation, Inc. We find no merit to the Tribe's argument that *Lewis*, *Hoover*, and *Aircraft 1* are contrary to federal law.

¶ 8 We adhere to the long-standing, well-established rule that if a court has the power to render a judgment, it has the power to enforce its judgment and give it effect through the proper processes. *United States ex rel. Riggs v. Johnson County*, 6 Wall. 166, 18 L.Ed. 768 (1868). We determined

in *Aircraft 1* that the district court sitting in Oklahoma County had the power to render a money judgment against the Tribe for its failure to perform a contract executed outside of Indian country and we affirmed the summary judgment entered in favor of Aircraft and against the Tribe. Aircraft, as a judgment creditor, sought to enforce its judgment against the Tribe, as the judgment debtor, through an authorized equitable remedy.[7] Accordingly, we concluded that the District Court in Oklahoma County had the power to enforce its money judgment affirmed in *Aircraft 1* through the equitable remedy in the nature of a creditor's bill.

¶ 9 The Tribe asserted before the district court and asserts in this appeal that exercise of state judicial power to seize tribal tax revenues impermissibly infringes upon the Tribe's federally protected sovereign rights. Citing *Merrion v. Jacarilla Apacache Tribe*, 455 U.S. 130, 102 S.Ct. 894, 71 L.Ed.2d 21 (1982), the Tribe contends that the power to tax is an essential attribute of Indian sovereign rights. Without citation of authority, the Tribe argues that the power to tax is meaningless if the state has the power to seize the fruits of the taxing power or restrain tax enforcement. Our independent research reveals no authority holding that satisfaction of valid, enforceable money judgment against a taxing entity out of its tax revenues renders the power to tax meaningless or otherwise diminishes or surrenders the power to tax.

¶ 10 The Tribe also argues that enforcement of the money judgment infringes upon tribal self-government contrary to *Lewis v. Sac and Fox Tribe of Oklahoma Housing Authority*, *supra*. Enforcement of a money judgment against an Indian tribe in a court of competent jurisdiction is

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[7] 12 O.S. 1991, § 841.

obviously a burden upon the Tribe. However, *Lewis* does not suggest that the district court must make inquiry as to whether a state-court, post-judgment enforcement proceeding burdens the Tribe. *Lewis* requires a preliminary inquiry to test the outer limits of state-court cognizance to render judgment on the Indian interests in the initial controversy, the contract controversy in *Aircraft 1*. We view the burden of enforcement of the money judgment in favor of Aircraft and against the Tribe as legally permissible where the Tribe ventured outside its Indian country, engaged in commercial activity for economic gain, and created a contract controversy which was ultimately settled in a court of competent jurisdiction by the money judgment sought to be enforced.[8] Any other view would render the state court judgment meaningless and deny Aircraft a peaceful means of satisfying its money judgment.

¶ 11 That the Tribe had the opportunity to challenge Aircraft's right to pursue a creditor's bill is not an issue. In response to Aircraft's summary judgment motion, the Tribe elected to reiterate its challenge to the power of the court to render the money judgment in the first instance and to enforce the judgment. The Tribe did not, however, challenge the availability or propriety of the equitable remedy. Below and open on Appeal, the parties represent that there is no dispute as to any fact material to this post-judgement controversy. Under these circumstances, summary judgment granting the petition for a creditor's bill was proper.

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[8]Indians going outside Indian country are subject to the nondiscriminatory state law applicable to all the state's citizens, unless otherwise expressly provided by federal law. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973).

¶ 12 Aircraft, in its cross-appeal, challenges the interpleader. Aircraft contends the district court abused its power in ordering payment of the Tribe's funds in the possession of the oil and gas entities into the court. An order for holding funds in the court is within the discretion of that court.[9] and will not be disturbed by the appellate court except upon a showing of clear abuse. It is undisputed that both Aircraft and the Tribe claim entitlement to the funds ordered to be paid into the court. Title 12 O.S. 1991, § 2022 provides that a defendant who is exposed to double or multiple liability may obtain interpleader by way of cross-claim or counterclaim. This is precisely the situation confronting the oil and gas entities in the court below. We find no abuse of discretion in the district court's order for payment of the funds into the court.

JUDGMENT OF THE DISTRICT COURT AFFIRMED.

HODGES, LAVENDER, HARGRAVE, OPALA and WILSON, JJ, concur.

SIMMS and WATT, JJ., concur in result.

KAUGER, C.J., and SUMMERS, V.C.J., dissent.

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[9] *City of Barnsdall v. Curnutt*, 210 Okla. 508, 510, 207 P.2d 320, 322 (1949).

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY,	)	
	)	
Appellee/Cross-Appellant,	)	
	)	
v.	)	
	)	No. 86,184
THE KIOWA TRIBE OF OKLAHOMA,	)	
	)	
Appellant/Cross-Appellee,	)	
	)	
WATSON MANAGEMENT GROUP, INC.; KOCH OIL COMPANY, a division of KOCH INDUSTRIES, INC.; AQUILA ENERGY CORPORATION; KERR MCGEE REFINING CORPORATION; PLAINS LIQUIDS TRANSPORT, INC.; SUN COMPANY, INC. (R&M); ASSOCIATED NATURAL GAS, INC.; ASSOCIATED TRANSPORT AND TRADING COMPANY; SENEX PIPE LINE COMPANY; and HAMON OPERATING COMPANY,	)	
	)	
Appellees.	)	

SIMMS, J., CONCURS IN RESULT:

Time has passed for this challenge to the State's assertion of jurisdiction over the Tribe as barred by sovereign immunity. This Court's decision in Aircraft 1 holding the Tribe subject to suit for money damages arising from breach of the Tribe's contractual obligations is final and is the law of the case. The instant proceeding is brought only to enforce that judgment which is valid in all respects and is properly allowed by the Court.

The dissent's reliance on *Oklahoma Tax Comm'n. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 111 S.Ct. 905 (1991), is misplaced as that decision does not involve questions regarding the effects of sovereign immunity on efforts of the State to enforce an existing judgment in its favor against an Indian tribe. Rather, *Citizen Band* concerns issues of the tribe's immunity from suit by the state. It was this immunity from a lawsuit which the court was discussing as barring the State from its "most efficient remedy" in the particular quote set forth by the dissent. Neither the quotation nor the greater scope of the court's decision reached the question presented in the instant matter: whether the judgment entered against the Tribe in Aircraft 1, which is final and valid, may not be enforced by means of ordinary judicial process by the district court which rendered it.

Appendix 16

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY,	)	
	)	
Appellee/Cross Appellant,	)	
	)	
v.	)	
	)	No. 86,184
THE KIOWA TRIBE OF OKLAHOMA,	)	
	)	
Appellant/Cross Appellee,	)	
	)	
WATSON MANAGEMENT GROUP, INC.; KOCH OIL COMPANY, a division of KOCH INDUSTRIES, INC.; AQUILA ENERGY CORPORATION, KERR MCGEE REFINING CORPORATION, ORYX ENERGY CORPORATION, PLAINS LIQUIDS TRANSPORT, INC., SUN COMPANY, INC. (R&M), ASSOCIATED NATURAL GAS, INC., ASSOCIATED TRANSPORT AND TRADING COMPANY, SENEX PIPE LINE COMPANY, and HAMON OPERATING COMPANY,	)	
	)	
Appellees.	)	

Summers, V.C.J., dissenting, with whom Kauger, C.J. joins.

¶ 1 My views on the judgment itself are expressed in the opinion dissenting from *Aircraft Equipment Co. v. Kiowa Tribe*, 921 P.2d 359, 362 (Okla. 1996). I also dissent from today's decision to permit collection of the judgment from the Tribe in derogation of Kiowa tribal sovereign immunity.

¶ 2 The majority concludes that if the state has the power to render a judgment against a tribe, it thus has the power to enforce the judgment. This sounds reasonable, but it is in direct conflict with the United States Supreme Court case of *Oklahoma Tax Comm'n v. Citizens Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991).

In *Citizens Band*, with Chief Justice Rehnquist writing, the Court opened by saying:

> Indian tribes are "domestic dependent nations" that exercise inherent sovereign authority over their members and territories. *Cherokee Nation v. Georgia*, 5 Pet. 1, 17, 8 L.Ed. 25 (1831). Suits against Indian tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation.[1] *Santa Clara Pueblo v. Martinez*, 436 U.s. 49, 58, 98 S.Ct. 1670, 1677, 56 L.Ed.2d 106 (1978). 498 U.S. at 507

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[1]This rule is not recognized by the Supreme Court of Oklahoma. See *Hoover v. Kiowa Tribe*, 909 P.2d 59 (Okla. 1995); *Aircraft Equipment Co., supra.*

It went on to say:

> A doctrine of Indian tribal sovereign immunity was originally enunciated by this Court and has been reaffirmed in a number of cases. (Citations omitted) 498 U.S. at 510

Then after discussing Congress' consistent reluctance to undercut tribal sovereign immunity it said:

> Under these circumstances, we are not disposed to modify the long-established principle of tribal sovereign immunity. 498 U.S. at 510

The Supreme Court went on to hold that Oklahoma had the power to tax the Tribe's sale of cigarettes to non-tribal members. However, the Court recognized that while a judgment in favor of the Oklahoma Tax Commission for the tax on such sales was valid, the Tax Commission lacked the power to enforce it directly against the Tribe. As to enforcement of such a judgment the Court stated:

> There is no doubt that sovereign immunity bars the State from pursuing the most efficient remedy, but we are not persuaded that it lacks any adequate remedy. We have never held that individual agents or officers of a tribe are liable for damages in actions brought by the State. *See Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). And under today's decision, either by seizing unstamped

> cigarettes off the reservation, *Colville*, *supra*, 447 U.S., at 161, 162, 100 S.Ct., at 2085-2086, or by assessing wholesalers who supplied unstamped cigarettes to the tribal stores, *City Vending of Muskogee, Inc. v. Oklahoma Tax Comm'n*, 898 F.2d 122 (10th Cir. 1990). States may also enter into agreements with the tribes to adopt a mutually satisfactory regime for the collection of this sort of tax. See 48 Stat. 987, as amended, 25 U.s.C. § 476. And if Oklahoma and other States similarly situated find that none of these alternative produce the revenues which they are entitled, they may of course seek appropriate legislation from Congress. (emphasis added)

Id. at 514. This paragraph clearly shows that in lawsuits against Indian tribes a right does not necessarily carry with it a complete remedy, according to the U.S. Supreme Court. The majority's position to the contrary today is inconsistent with *Citizens Band*.

¶ 3 The Court attempts to distinguish *Citizens Band* by pointing out that suits against individuals or officers of the tribe are permitted, and that the state as judgment creditor could also pursue the wholesalers who provided the unstamped cigarettes. That is true. What today's Court fails to note is that the present action is not one against individual officers of the tribe nor some third party. This case is against the Kiowa Tribe of Oklahoma. It is strange, to say the least, that this Court gives Aircraft Equipment Co., as a

judgment creditor, a remedy against an Indian tribe which the United States Supreme Court says the State of Oklahoma, as a judgment creditors, would not have and could not use against an Indian tribe. "There is no doubt that sovereign immunity bars the State from pursuing the most efficient remedy. . . ." *Id.*

¶ 4 Enforcement of a judgment by means of judicial process against the Tribe is unlawful. I respectfully dissent.

Appendix 21

IN THE DISTRICT COURT
OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY, a partnership,	)	
Plaintiff,	)	
vs.	)	No. CJ-94-2522
WATSON MANAGEMENT GROUP, INC.; KOCH OIL COMPANY, a division of KOCH INDUSTRIES, INC.; and THE KIOWA TRIBE OF OKLAHOMA,	)	
Defendants.	)	

THE KIOWA TRIBE'S MOTION TO DISMISS, OBJECTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

Defendant, the Kiowa Tribe of Oklahoma (the "Tribe"), moves to dismiss this action for lack of jurisdiction and for failure to join indispensable parties. The Tribe also objects to plaintiff's motion for summary judgment. The Tribe submits the following brief in support of its request. Plaintiff's motion for summary judgment is set to be heard

on May 26, 1995, at 9:00 a.m. The Tribe requests that its Motion to Dismiss be heard at the same time.

STATEMENT OF THE CASE

Plaintiff filed a creditor's bill which seeks to satisfy a judgment entered against the Tribe by seizing Tribal oil and gas severance taxes paid by various defendants.[1] This action should be dismissed because the Court has no jurisdiction over the Tribe. The Tribe is a federally recognized sovereign. A state court has no jurisdiction over the Tribe unless the federal government so provides or the Tribe consents to such jurisdiction. Neither is present in this context. The federal government has not granted this Court jurisdiction and the Tribe has not agreed to it.

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[1] Plaintiff's underlying judgment is currently on appeal before the Oklahoma Supreme Court. In a related action, plaintiff garnished Tribal severance taxes to satisfy a portion of its judgment. The garnishments are also on appeal before the Oklahoma Supreme Court.

Appendix 23

STATEMENT OF UNDISPUTED FACTS[2]

1. The Tribe is a federally recognized Indian tribe.

2. The plaintiff has collected approximately $68,000 through garnishment proceedings in the case, *Aircraft Equipment Co. v. The Kiowa Tribe of Oklahoma*, Case No. CJ-92-10176. All of the garnished funds are oil and gas severance taxes collected under a taxation ordinance adopted by the Tribe and imposed against entities which remove oil or gas from Indian country land within the Tribe's jurisdiction.[3] This severance tax is not imposed against the royalty owners. (A true and correct copy of the ordinance is attached as Exhibit A to the Stipulation.)

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[2] Plaintiff already agreed to these facts by a Stipulation entered in a related case, *Aircraft Equipment Co. v. The Kiowa Tribe of Oklahoma*, Case No. CJ-92-10176. A copy of the Stipulation is attached as Exhibit A. The Tribe requests that this Court take judicial notice of the Stipulation pursuant to 12 Okla. Stat. §2202.

[3] "Indian country" is defined as: (a) all land within the limits of any Indian reservation and under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-ways running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 18 U.S.C. §1151 (1994).

3. The Ordinance was adopted by the Tribe as an exercise of its sovereign power to tax and as authorized by the Kiowa Constitution, Art. V., Sec. 2. The Kiowa Constitution was approved by the United States Commissioner of Indian Affairs. (A true and correct copy of the Kiowa Constitution is attached as Exhibit B to the Stipulation.)

4. Due to plaintiff's garnishments, the Tribe has lost all of the revenue from its severance tax since December, 1993.

5. The Tribe's severance tax constitutes approximately 33% of its total tax revenue. The severance tax is used to fund tribal undertakings, including the following: (a) pay salaries to tribal employees, (b) maintain tribal real and personal property, (c) support education and job training programs and (d) supplement the funding of various federal-tribal programs.

THE TRIBE'S RESPONSE TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

1. The Tribe admits that plaintiff recovered a judgment against the Tribe in *Aircraft Equipment Co. v. The Kiowa Tribe of Oklahoma*, Case No. CJ-92-10176. The Tribe asserts that the Oklahoma County District Court has no jurisdiction to enter a judgment against it. The Tribe's appeal of jurisdiction is pending before the Oklahoma

Supreme Court in *Aircraft Equipment Co. v. The Kiowa Tribe of Oklahoma*, Appeal No. 82,505.

2. The Tribe admits that plaintiff executed on its judgment and garnished approximately $68,000 in tribal severance tax funds. (See Undisputed Fact No. 2 above.)

3. The Tribe admits that Judge Ricks denied the Tribe's claim for exemption in the garnishment proceedings. The Tribe asserts that the Oklahoma County District Court has no jurisdiction to garnish a sovereign's property and tax revenues. The Tribe's appeal of the garnishment is pending before the Oklahoma Supreme Court in *Aircraft Equipment Co. v. The Kiowa Tribe of Oklahoma*, Appeal No. 85,272.

4. The Tribe admits that various defendants possess funds which are lawfully owed to the Tribe pursuant to its severance tax.

ARGUMENTS AND AUTHORITIES

I.
THIS COURT HAS NO JURISDICTION OVER THE TRIBE AND NO AUTHORITY TO SEIZE A SOVEREIGN'S TAX REVENUES.

Under federal law and Oklahoma law, this Court has no jurisdiction over the Tribe and no jurisdiction to order the defendants to pay tribal severance tax funds to plaintiff. This case should be dismissed.

A. Federal Law.

Suits against federally recognized Indian tribes are barred by sovereign immunity unless the Tribe clearly waives its immunity or Congress provides for jurisdiction. Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 111 S.Ct. 905, 909, 112 L.Ed.2d 1112 (1991); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 98 S. Ct. 1670, 56 L.Ed. 2d 106 (1978). Tribal immunity remains intact and is a vital part of federal policy. Oklahoma Tax Comm'n, 111 S.Ct. at 910 (Congress retains its overriding goal to promote Indian self-government and thus the Court is "not disposed to modify the long-established principle of tribal sovereign immunity").

In this case, there is neither waiver nor congressional abrogation. It is undisputed that the Tribe has not waived its sovereign immunity and Congress has not nullified the Tribe's immunity from suit. The Tribe did not waive its immunity in the underlying judgment, in the garnishment proceedings or in this action.

Federal courts have allowed suits against Indian tribes where tribal interests conflicted with those of the State on taxation or regulatory issues. When doing so, the United States Supreme Court uses two standards to determine whether there is an exception to tribal immunity which allows a State court to exercise jurisdiction: preemption by federal action and infringement upon tribal self-government. Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U.S. 685, 85 S.Ct. 1242, 14 L.Ed.2d 165 (1965). New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 103 S.Ct. 2378, 76 L.Ed.2d 611 (1983); State ex rel. May v. Seneca-Cayuga Tribe, 711 P.2d 77, 84 (Okla. 1985).

In this case, the State's regulatory or taxation scheme is **not** at issue and thus these two standards are not applicable. If, however for the sake of argument, the preemption and infringement standards are applied, neither allow the district court to exercise jurisdiction to seize tribal tax revenues.

* *

2. Infringement upon Tribal Self-Government

There is a strong federal policy which promotes the self-government and economic development of Indian tribes. Oklahoma Tax Comm'n, 111 S.Ct. at 910. This strong policy is backed by an extensive legislation designed to preserve tribal entities and assets. 25 U.S.C. §450 et seq.; 25 U.S.C. §450a(b) (Congress declares its policy to be a strong commitment to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing economies of their respective communities).

The Tribe can satisfy this federal mandate and function as a sovereign solely through the exercise of its power to tax. The Tribe's taxing power is essential to raise funds to operate its government. Without tax revenues, it cannot act.

If a State seizes tribal property, then it restricts the tribe's ability to govern. Such a restriction is particularly acute when, as in this case, the seized property is admitted to be one-third of the Tribe's total tax revenues. The taking of such funds by the State directly infringes upon and defeats

an overriding federal policy. The district court did not have jurisdiction or authority to order the Tribe's tax revenues paid to plaintiff.

* *

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OF OKLAHOMA

Appendix 29

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY, a joint venture,	)	
Plaintiff,	)	
vs.	)	No. CJ-92-10176
THE KIOWA TRIBE OF OKLAHOMA,	)	
Defendant,	)	
AND	)	
WATSON MANAGEMENT GROUP, INC.,	)	
Garnishee.	)	

STIPULATION

Plaintiff, Aircraft Equipment Company ("Aircraft),

(EXHIBIT "A" TO KIOWA TRIBE'S MOTION TO DISMISS, OBJECTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT)

and defendant, the Kiowa Tribe (the "Tribe"), stipulate that the following facts are true and correct for the purposes of the proceedings in the above-styled case:

1. The Tribe is a federally recognized Indian tribe.

2. The plaintiff has collected approximately $68,000 through its garnishment proceedings in this case. All of these funds are oil and gas severance taxes collected by Watson Management Group, Inc. ("Watson"), as an independent contractor pursuant to a contract with the Tribe, under a taxation ordinance adopted by the Tribe and imposed against entities which remove oil or gas from Indian country land within the Tribe's jurisdiction. (A true and correct copy of the Watson contract is attached hereto as Exhibit A) This severance tax is not imposed against the royalty owners. (A true and correct copy of the ordinance is attached as Exhibit B.)

3. The Ordinance was adopted by the Tribe as an exercise of its sovereign power to tax and as authorized by the Kiowa Constitution, Art. V., Sec. 2. The Kiowa Constitution was approved by the United States Commissioner of Indian Affairs. (A true and correct copy of the Kiowa Constitution is attached hereto as Exhibit C.)

4. The judgment creditor has collected the tax revenues by serving garnishment summons upon Watson each month at the approximate time the tax revenue checks are received by Watson. Hence, the Tribe has lost all of the revenue from its severance tax since December, 1993.

5. The Tribe's severance tax constitutes approximately 33% of its total tax revenue. The severance tax is used to fund tribal undertakings, including the following: (a) pay salaries to tribal employees, (b) maintain tribal real and personal property, (c) support education and job training programs and (d) supplement the funding of various federal-tribal programs.

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AIRCRAFT EQUIPMENT COMPANY

Certificate of Service

I hereby certify that on the _____ day of November, 1994, a true and correct copy of the above and foregoing instrument was deposited in the United States mail with postage prepaid, addressed to the following:

Ryland L. Rivas, Esq.
628 Choctaw Avenue
Chickasha, Oklahoma 73018

s/Sheila D. Tims

(EXHIBITS OMITTED)

Appendix 33

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS HAD ON THE 14th DAY OF AUGUST, 1995 BEFORE THE HONORABLE JOHN M. AMICK DISTRICT JUDGE OF OKLAHOMA COUNTY OKLAHOMA

* *

BY MR. WALLACE... These are the laws of a sovereignty government recognized by the federal government of the United States of America. Now, I know it is very problematical how much authority a Court can exercise over an Indian tribe, but the most, what should I say, the most liberal description of this Court's jurisdiction says that it cannot interfere with an Indian tribe's right to self govern. A very key issue to the right to self govern is a right to enact taxation laws, collect the taxes from those laws and use the proceeds in governmental enterprises. That's all the Kiowa Tribe is doing here, so I think -- I think, like I said, I think this issue is going to present itself in any number of ways that one wishes to look at it, whether it be from the standpoint that the federal law protects these tax revenues or whether it be from the standpoint that the Court must do complete justice among the parties in equity and it can't be done. Either of those two ways will present this issue. We simply are not in a situation where the Court can grant a creditor's bill and walk away, leaving the tribe to enforce its tax liens. I mean, if we do that, what the tribe winds up doing, is the tribe winds up going to federal Court where there's special jurisdiction over such matters, filing a

foreclose against the working interest in this case and seeking to, you know, realize its money there. (TR. p. 10-11)

* * * * * * * * * * * * * * * * * * *

THE COURT ...if we have jurisdiction to enter a judgment against a tribe, I think we have jurisdiction to enforce that judgment. Now, I am painfully unaware of the Indian law. I just don't have any idea about it. It never occurred to me that I would ever have anything to do with it. I have neglected to attend these sovereignty symposiums, where I presume they deal with the affect of Indian law in the courts here in the state of Oklahoma, but I just don't have any idea about it. But I'm -- based on the assumption that we have jurisdiction to render the judgment, I'm going to assume that we have jurisdiction to enforce the judgment and I think that the creditor's bill is an appropriate method of enforcing the judgment. And if I grant a creditor's bill, I certainly have to, I think in all good conscious, restrain the tribe from enforcing their lien against the working interest owners who are party to this case. So I think what all that amounts to is a judgment in favor of the plaintiff, Aircraft Equipment Company, on the creditor's bill. (TR. p. 19-20)

* * * * * * * * * * * * * * * * * * * *

Appendix 35

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY, a joint venture,	)
Plaintiff,	)
vs.	)No. CJ-94-2522
THE KIOWA TRIBE OF OKLAHOMA AQUILA ENERGY CORPORATION, THE HOME-STAKE ROYALTY CORPORATION, KERR McGEE REFINING CORPORATION, ORYX ENERGY CORPORATION, PLAINS LIQUIDS TRANSPORT, INC., SUN COMPANY, INC. (R & M), ASSOCIATED NATURAL GAS, INC., ASSOCIATED TRANSPORT AND TRADING COMPANY, SENEX PIPE LINE COMPANY, and HAMON OPERATING COMPANY,	)
Defendant.	)

JOURNAL ENTRY OF JUDGMENT

On the 14th day of August, 1995 there came on for trial Plaintiff's Petition for equitable relief in the nature of a creditor's bill, Plaintiff appearing by Counsel William J.

Robinson; The Kiowa Tribe of Oklahoma appeared by Counsel R. Brown Wallace and Shelia D. Tims; Aquila Energy Corporation appeared by Counsel Jan Preslar and Oryx Energy, Inc. appeared by Counsel Jonathan Miller;, and the Court, having heard argument of counsel, and having examined the real evidence introduced and the stipulation of the parties, finds that the Plaintiff has sustained the material allegations of its Petition and is entitled to Judgment subjecting to the satisfaction of the Plaintiff's Judgment in District Court of Oklahoma County, Case No. CJ-92-10176, styled Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma, et al., the severance taxes due from the defendant oil companies to the Kiowa Tribe of Oklahoma as same accrue, provided, however, that said moneys be paid into court, rather than to the Plaintiff, until further order of the Court; and the Court further finds that the tribes should be restrained from enforcing its lien against the oil companies who are a party to this action.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff, Aircraft Equipment Company, have and recover Judgment subjecting to the Judgment of Plaintiff, as aforesaid, the moneys accrued and accruing owing by the defendant oil companies to The Kiowa Tribe of Oklahoma, and being paid into Court pursuant to this Court's Order of July 5, 1995; provided, however, that said moneys be paid into Court until further order of the Court and it is further ordered that The Kiowa Tribe of Oklahoma be, and the same is and hereby restrained from enforcing its lien against the defendant oil companies herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT the Court's July 5, 1995 Order, attached hereto, remains in effect and is incorporated as though fully set forth herein; and it is further ordered that a determination of the reasonable fees recoverable by the defendants be stayed until the appeal of the Kiowa Tribe on the underlying judgment, in the case stayed Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma, et al., Case No. 85,272, in the Supreme Court of the State of Oklahoma, is resolved.

Dated this 13th day of October, 1995.

S/John M. Amick
JUDGE OF THE DISTRICT COURT

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Appendix 39

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

AIRCRAFT EQUIPMENT COMPANY, a partnership,	)	
Plaintiff,	)	
vs.	)	No. CJ-94-2522
WATSON MANAGEMENT GROUP, INC.; KOCH OIL COMPANY, a division of KOCH INDUSTRIES, INC.; and THE KIOWA TRIBE OF OKLAHOMA,	)	
Defendants.	)	

ORDER

On this 26th day of May, 1995, the following came on for hearing before the undersigned Judge:

1. Motion for Summary Judgment of Plaintiff against Judgment Debtor, the Kiowa Tribe of Oklahoma;

(EXHIBIT "A" TO JOURNAL ENTRY OF JUDGMENT OF AUGUST 14, 1995)

2. Motion to Dismiss filed by the Kiowa Tribe of Oklahoma;

3. Order of May 3, 1995, to show cause why 1) Aquila Energy Corporation should not be discharged upon its payment to the clerk of the Court of disputed severance taxes; 2) Plaintiff and Kiowa Tribe be enjoined from seeking from Aquila monies paid into Court pursuant to May 3, 1995 Order; and 3) why attorney's fees should not be paid as for interpleader;

4. Motion of Plains Liquids Transport, Inc. to pay money into Court and for Attorney's Fees as for interpleader;

5. Motion of The Home-Stake Royalty Corporatio to pay money into Court, be dismissed from this action, enjoin Plaintiff, Kiowa Tribe of Oklahoma and Watson Management Group, Inc. from making any further claim against The Home Stake Royalty Corporation for severance taxes paid into Court, and Attorney's Fees as for interpleader;

Appearances were made for the parties as shown:

Party	Counsel
Plaintiff	William J. Robinson
Judgment Debtor, Kiowa Tribe	Brown Wallace

Aquila Energy	Donna Blakley
The Home Stake Royalty Corp.	Peter Braford
Kerr-McGee Refining Corp.	Myron Cunningham
ORYX	Jonathan Peters
Plains Liquids	Dwight Birdwell
Sun Company, Inc., Associated Natural Gas, Inc. and Associated Transport and Trading Company	Robin Fields
Total Petroleum	Joseph L. Carnell

The Court finds:

1. The ruling on Plaintiff's Motion for Summary Judgment should be withheld pending the formal disposition of the appeals of Judgment Debtor in Supreme Court of Oklahoma Case #82,505, styled Aircraft Equipment Company v. Kiowa Tribe of Oklahoma and Watson Management Group, Inc., and in Supreme Court of Oklahoma Case # 85,272, styled Aircraft Equipment Company v. The Kiowa Tribe of Oklahoma;

2. The Motion to Dismiss of Judgment Debtor Kiowa Tribe should be overruled without prejudice to a refiling after the disposition in paragraph 1., above;

3. All of the Defendant oil companies should and are hereby ordered to pay into Court all monies currently being held and which may hereafter accrue derived from the imposition of a severance tax by the Kiowa Tribe against proceeds from the sale of oil, gas and other hydrocarbons produced from lands owned by the said Tribe or any of its members (whether same are being held voluntarily or

pursuant to garnishment in Case #CJ-92-10176 or are the subject of prior garnishments in this action);

Upon payment of the disputed funds into Court by the Defendant oil companies who are disinterested stakeholder, each of the Defendant oil companies should be and are hereby dismissed from this action and released from all liability regarding the disputed funds paid into Court. This dismissal is contingent upon the Defendant oil companies who are disinterested stakeholders continuing to pay into the Court the disputed funds which may hereafter accrue.

Certain Defendant oil companies/disinterested stakeholders have previously been ordered to interplead current and future disputed funds into Court and dismissed from the action. Their status remains unchanged as a result of this Order.

4. The Kiowa Tribe should be and is hereby enjoined from enforcing its laws insofar as said laws (1) create a lien, and a foreclosure right, upon any Defendant, a bond to assure payment of the severance tax, which may result from a non-payment of such taxes by reason of the payment of said taxes into Court as ordered herein;

5. The Plaintiff should be and is hereby restrained from garnishing in the hands of any said purchasers/Defendants any such severance taxes accruing until further Order of the Court;

6. The Clerk is to hold the said monies so paid into Court in an interest bearing account as in the statutes so providing until further Order of the Court; and,

7. Defendants, who are disinterested stakeholders who have sought to interplead the disputed funds into Court, are entitled to recover from their respective interpled funds their costs, including reasonable attorney's fees, incurred in interpleading the disputed funds into Court. A determination of the amount of reasonable fees recoverable by these Defendants is deferred until a later date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED in accordance with the foregoing findings.

S/John M. Amick
JUDGE OF THE DISTRICT COURT

APPROVED:

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